IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 64 OF 2002

SHRI JOHN SEQUEIRA ....Appellants

Versus

SHRI DIOGO ROSARIO DIAS ....Respondents

MR.A.J.KENKARE,MR.R.G.RAMANI FOR RESP.

Coram:- A.M.KHANWILKAR, J.

Date:- 28th November, 2003

P.C.:

Heard.

I find no reason to interfere in this Second Appeal. The only question that was raised before the Court below is whether the respondents had access on the northern side of the property Chalta No.42 and whether the trial Court committed any illegality in appreciating the evidence on record and dismissing the suit. The appellate Court, on analysing the entire materials on record, has found that the evidence on record would clearly belie the appellant's contention that the Respondents had access on the southern side of Plot No.42 and touches Plot No.41 at its southern-most corner side and the existence of access on the western boundry cannot be accepted. That is essentially a finding on fact. To get over this position, Mr.Usgaonkar contends that the

appellate Court has wrongly discarded th
e document (Exh.DW1/D-1) which is a publ
ic document, contrary to the decision of
the Apex Court in P.C. Purushothama Red
diar v. S.Perumal reported in A.I.R. 197
2 S.C., 608. Accordingly it is argued th
at substantial question of law as formul
ated i.e. question of law as formulated
i.e. question No.6. would arise for cons
ideration of this Court, which reads thu
s:-

"6) Whether the Addl. Dist. Judge erred
in holding that the letter dated 5.11.19
83 (Exhibit DW-1/D1) is not proved, when
in fact it is a public document and on
application of respondent No.1. This dec
ision of the Addl. Dist. Judge is contra
ry to the rule laid down by Supreme Cour
t of India in AIR 1972 SC 608 - PS Purus
hotam V.S. Perumal."

However, from the finding as recorded by
the appellate Court, in paragraph 12, i
t is clear that the said document DW-1/D
1 has not been proved in evidence. Accor
ding to Mr. Usgaonkar, since the said do
cument has been exhibited by the Trial C
ourt, it has been properly admitted in e
vidence for which reason it cannot be di
scarded.

I find no substance in this argument bec
ause, it is rightly argued on behalf of
the respondents that production of this
document was objected to by the responde
nts during the trial, inasmuch as this d

ocument was sought to be tendered only d
uring the cross-examination of P.W.1/ori
ginal plaintiff and that objection has b
een recorded by the Trial Court. It is i
n that backdrop the appeal court has fou
nd that this document is not proved.
Mr. Usgaonkar, however, contends that th
e said document is a communication sent
by the Authority to the owner of the plo
t and, therefore, is a public document.
This argument does not commend to me. Me
rely because communication is sent by th
e Authority, that by itself, cannot part
ake the colour of a public document. Pub
lic document has been defined in Section
74 of the Evidence Act and, the dispute
d document which is pressed into service
, obviously will not fall in any of the
category specified therein. In that sens
e, neither the argument of public docume
nt nor the same has been properly admitt
ed in evidence is available to the appel
lant.
In the circumstances, there is no reason
to interfere with the finding of fact r
ecorded by the Appellate court. To my mi
nd no substantial question of law would
arise in this appeal.
Mr.Usgaonkar then contends that merely b
ecause some passage/access is available,
that by itself cannot create any right
in favour of the respondents. That aspec
t has been considered by the Court below
and finding of fact has been returned a

fter analysing the evidence on record th
at the respondents had access on the nor
thern side of Chalta No.42.
In the circumstances,no case for interfe
rence is made out. Hence rejected. In vi
ew of this order, C.A. dismissed.

A.M.KHANWILKAR, J.